



Australian Capital Territory

# **Guardianship and Management of Property Act 1991**

**A1991-62**

**Republication No 4A**

**Effective: 1 June 2000 – 8 June 2000**

Republication date: 25 August 2017

Last amendment made by A2000-17

## **About this republication**

### **The republished law**

This is a republication of the *Guardianship and Management of Property Act 1991* effective 1 June 2000 to 8 June 2000.

### **Kinds of republications**

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### **Editorial changes**

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory

# Guardianship and Management of Property Act 1991

## CONTENTS

### PART 1—PRELIMINARY

- 1 Short title
- 2 Commencement
- 3 Principles to be observed
- 4 Definitions
- 5 Limits on findings of disability
- 6 Jurisdiction of the Supreme Court not affected

### PART 2—GUARDIANS AND MANAGERS

#### *Division 1—Appointment and powers*

- 7 Appointment and powers of guardians
- 8 Appointment and powers of managers
- 9 Who may be appointed
- 10 Considerations affecting appointment
- 11 Powers to be least restrictive
- 12 Recognition of interstate etc guardians and managers
- 13 Authority of guardian or manager
- 14 Obligations
- 15 Fees and expenses

#### *Division 2—Supervision*

- 16 Directions by tribunal
- 17 Restrictions on tribunal's power to give directions
- 18 Advice by tribunal
- 19 Regular review etc

#### *Division 3—Matters relating to management*

- 20 Access to records

*Guardianship and Management of Property Act 1991*

**CONTENTS**—continued

|     |   |
|-----|---|
| 21  | Payments for maintenance etc                              |
| 22  | Receipt of money  |
| 23  | Execution of instruments                                  |
| 24  | Investments   |
| 25  | Real estate   |
| 26  | Accounts  |
| 27  | Examination of accounts                                   |
|     | <i>Division 4—Cessation of guardianship or management</i> |
| 28  | Resignation   |
| 29  | Death of represented person                               |
| 30  | Manager may act until notified of discharge etc           |
| 31  | Removal by tribunal                                       |
| 32  | Surviving or substitute guardians etc                     |
|     | <b>PART 3—INQUIRIES BY TRIBUNAL</b>                       |
|     | <i>Division 1—Procedure</i>                               |
| 33  | Need for inquiry  |
| 34  | Sittings  |
| 35  | Notice of inquiry   |
| 36  | Appearance and representation                             |
| 36A | Appearance by audiovisual or audio links                  |
| 37  | Conduct of inquiry  |
| 38  | Evidence  |
| 39  | Authority for medical or other examinations               |
| 40  | Assistance for tribunal                                   |
| 41  | Power to obtain information and documents                 |
| 42  | Retention of documents                                    |
| 43  | Form of orders  |
| 44  | Proof of orders   |
| 45  | Obtaining reasons for decisions                           |
| 46  | Withdrawal of applications                                |
| 47  | Costs   |
|     | <i>Division 2—Miscellaneous</i>                           |
| 48  | Removal of persons disrupting inquiries                   |
| 49  | Prohibited publications                                   |
| 50  | Failure to answer questions etc                           |
| 51  | Failure to attend before tribunal                         |
| 52  | Refusing to be sworn etc                                  |
| 53  | False information etc                                     |

*Guardianship and Management of Property Act 1991*

**CONTENTS**—continued

|     |  |
|-----|--|
| 54  | Influencing participants in inquiry                                |
| 55  | Obstructing tribunal   |
|     | <i>Division 3—Appeals</i>  |
| 56  | Appeals  |
|     | <b>PART 4—GUARDIANSHIP AND MANAGEMENT OF<br/>PROPERTY TRIBUNAL</b> |
|     | <i>Division 1—Establishment, functions and powers</i>              |
| 57  | Establishment  |
| 58  | Functions and powers   |
|     | <i>Division 2—Tribunal members</i>                                 |
| 59  | Membership of tribunal   |
| 60  | Presidential members   |
| 61  | Non-presidential members   |
| 62  | Terms of appointment generally                                     |
| 63  | Matters to be included in instrument of appointment etc            |
| 64  | Duration of appointment  |
|     | <i>Division 3—Registrar and deputy registrars</i>                  |
| 65  | Registrar and deputy registrars of tribunal                        |
|     | <i>Division 4—Other provisions</i>                                 |
| 66  | Constitution of tribunal   |
| 66A | Role of president  |
| 66B | Deciding questions   |
| 66C | Protection of members etc  |
| 66D | Secrecy  |
|     | <b>PART 5—MISCELLANEOUS</b>  |
| 67  | Emergency appointments   |
| 68  | Emergency removal of disabled persons                              |
| 69  | Capacity to consent to medical etc procedures                      |
| 70  | Tribunal may consent to prescribed medical procedures              |
| 71  | Power to adjust transactions                                       |
| 72  | Injunctions to restrain dealings                                   |
| 73  | Conduct of directors, servants and agents                          |
| 75  | Determination of fees  |
| 77  | Regulation-making power  |
| 78  | Transitional provisions about tribunal members                     |

*Guardianship and Management of Property Act 1991*

**CONTENTS**—continued

ENDNOTES

- 1 About this republication
- 2 Abbreviation key
- 3 Table of legislation
- 4 Table of amendments
- 5 Table of earlier republications
- 6 Penalties in this republication

As in force on  
1 June 2000



Australian Capital Territory

## **Guardianship and Management of Property Act 1991**

An Act to provide for guardianship, and management of the property, of  
certain persons and for related purposes

### **PART 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Guardianship and Management of Property Act 1991*.

#### **2 Commencement**

(1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.

(2) The remaining provisions of this Act commence on a day fixed by the Minister by notice in the Gazette.

(3) If the remaining provisions of this Act have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the Gazette, those provisions, by force of this subsection, commence on the first day after the end of that period.

#### **3 Principles to be observed**

(1) Where, because of a physical, mental, psychological or intellectual condition, a person—

*Guardianship and Management of Property Act 1991*

- (a) needs assistance or protection from abuse, exploitation or neglect;  
or
- (b) is legally incompetent or unable to enter into particular transactions;

a person who exercises a function or power under or in relation to this Act in relation to the firstmentioned person shall observe the principles set out in subsection (2).

(2) The principles to be observed in accordance with subsection (1) are the following:

- (a) that the person's views and wishes, so far as they can be ascertained, should receive paramount consideration;
- (b) that the decisions made about the person should be, as nearly as possible, the decisions that he or she would have made if not affected by the condition concerned;
- (c) that the person's welfare and interests should be appropriately protected;
- (d) that the person's life should not be interfered with except to the least extent necessary;
- (e) that the person should be encouraged to look after himself or herself;
- (f) that, as far as possible, the person should live in the general community and join in community activities.

(3) The tribunal shall apply the principle that, unless the contrary is proved, persons suffering from physical, mental, psychological or intellectual conditions are legally competent and their decisions are reasonable.

(4) This Act shall be construed in accordance with subsections (1), (2) and (3).

#### **4 Definitions**

In this Act, the following definitions apply:

*Note* A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).

***convulsive therapy*** means a procedure for the induction of an epileptiform convulsion in a person.



*Guardianship and Management of Property Act 1991*

***Crimes Act*** means the *Crimes Act 1900*.

***deputy president*** means a deputy president of the tribunal.

***doctor*** means a person registered as a medical practitioner under the *Medical Practitioners Act 1930*.

***guardian*** means a person who is, or is to be taken to be, a guardian under section 7, 12 or 32.

***inquiry*** means an inquiry under Part 3.

***judicial officer*** means a judge of the Supreme Court or a magistrate.

***manager*** means a person who is, or is to be taken to be, a manager under section 8, 12 or 32.

***member*** means a member of the tribunal.

***member***, of the tribunal, means the president, a deputy president or a non-presidential member.

***neurosurgery*** means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain.

***non-presidential member*** means a member of the tribunal who is not a presidential member.

***non-regenerative tissue***—see the *Transplantation and Anatomy Act 1978*.

***prescribed medical procedure*** means—

- (a) an abortion; or
- (b) reproductive sterilisation; or
- (c) a hysterectomy; or
- (d) a medical procedure concerned with contraception; or
- (e) removal of non-regenerative tissue for transplantation to the body of another living person; or
- (ea) treatment for psychiatric illness, convulsive therapy or psychiatric surgery; or
- (f) any other medical or surgical procedure prescribed for the purposes of this definition.

***president*** means the president of the tribunal.

***presidential member*** means the president or a deputy president of the tribunal.

***property*** includes—

- (a) money or a right to money; and
- (b) an estate or interest in real or personal property; and
- (c) things in action.

***psychiatric illness*** means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

***psychiatric surgery*** means surgery on the brain of a person, other than neurosurgery.

***spouse***, in relation to a person, includes a person of the opposite sex to the person who is not legally married to the person but who lives with the person on a bona fide domestic basis.

***tribunal*** means the Guardianship and Management of Property Tribunal established by section 57.

***trustee company***—see the *Trustee Companies Act 1947*.

## **5 Limits on findings of disability**

A person shall not be taken to have a physical, mental, psychological or intellectual condition relevant to section 7 or 8 merely because the person—

- (a) is eccentric; or
- (b) does or does not express a particular political or religious opinion;  
or

*Guardianship and Management of Property Act 1991*

- (c) is of a particular sexual orientation or expresses a particular sexual preference; or
- (d) engages or has engaged in illegal or immoral conduct; or
- (e) takes or has taken drugs, including alcohol (but any effects of a drug may be taken into account).

**6 Jurisdiction of the Supreme Court not affected**

Nothing in this Act limits the jurisdiction of the Supreme Court with respect to the guardianship of persons or the management of the property of persons.

## **PART 2—GUARDIANS AND MANAGERS**

### ***Division 1—Appointment and powers***

#### **7 Appointment and powers of guardians**

- (1) If, on application, the tribunal is satisfied that—
- (a) a person who resides in the Territory is unable, because of a physical, mental, psychological or intellectual condition—
    - (i) to make reasonable judgments about matters relating to his or her health or welfare; or
    - (ii) to do anything necessary for his or her health or welfare; and
  - (b) as a result, the person's health or welfare is, or is likely to be, substantially at risk;

the tribunal may, by order, appoint a guardian for the person, with such powers as are necessary to ensure that the person's health or welfare are adequately protected.

- (2) The powers that may be conferred on a person's guardian include the following powers:

- (a) to decide where and with whom the person is to live;
- (b) to decide what education or training the person is to receive;
- (c) to decide whether the person is to be allowed to work;
- (d) if the person is to be allowed to work—to decide the nature of the work, the place of employment and the employer;
- (e) to give for the person a consent required for a medical procedure or other treatment (other than a prescribed medical procedure);
- (f) to institute or maintain legal proceedings for or in the name of the person.

- (3) The powers that may be conferred on a person's guardian do not include the power to chastise the person or the power to do any of the following things for the person:

- (a) vote in an election;
- (b) make a will or other testamentary instrument;
- (c) consent to the adoption of a child;

*Guardianship and Management of Property Act 1991*

- (d) give a consent in relation to a marriage;
- (e) give for the person a consent required for a prescribed medical procedure.

(4) A guardianship order may be made for a person below the age of 18 years, but it does not take effect until the person attains that age.

(5) If the Supreme Court gives a direction under subsection 428J (2A) of the Crimes Act, the tribunal shall appoint a guardian for the accused with power to make an election mentioned in that subsection.

## **8 Appointment and powers of managers**

(1) If, on application, the tribunal is satisfied that—

- (a) a person is, because of a physical, mental, psychological or intellectual condition, legally incompetent to enter into a transaction relating to the person's property; and
- (b) either—
  - (i) it is likely that the question whether the person should enter into the transaction will arise; or
  - (ii) it is in the person's interests to preserve the person's property by preventing a purported disposition of the property;

the tribunal may, by order, appoint a person to manage all or a specified part of the property, with such powers as are necessary to allow the manager to enter into the transaction for the person or to prevent the disposition.

(2) The powers that may be conferred on a manager of a person's property are those that the person would have if he or she were legally competent to exercise them.

(3) The tribunal shall not, under subsection (1), appoint a manager for property in the Territory of a person who resides outside the Territory unless—

- (a) it is satisfied that it is impracticable for a manager for the property to be appointed in the place where the person resides; or
- (b) an order appointing a manager for the property under the law of that place cannot be registered under section 12.

(4) A management order may be made for a person below the age of 18 years, but it does not take effect until the person attains that age.

## **9 Who may be appointed**

(1) The community advocate or a natural person may be appointed as a guardian.

(2) The community advocate, the public trustee, a trustee company or a natural person may be appointed as a manager.

(3) A person may be appointed both guardian and manager, and persons may be appointed jointly as guardians or managers, or both.

(4) The community advocate shall not be appointed as a person's guardian if a natural person who is otherwise suitable has consented to be appointed.

(5) The community advocate, the public trustee or a trustee company shall not be appointed as a manager of a person's property if a natural person who is otherwise suitable has consented to be appointed.

## **10 Considerations affecting appointment**

(1) A person shall not be appointed as a guardian or manager unless the person consents in writing to the appointment.

(2) A person (except the community advocate, the public trustee or a trustee company) shall not be appointed as a guardian or manager unless the person has attained the age of 18 years and has informed the tribunal on oath or affirmation whether the person—

- (a) has been convicted or found guilty of an offence involving violence, fraud or dishonesty; or
- (b) has been, either in the Territory or elsewhere, refused appointment as a guardian or manager, or removed from office as a guardian or manager; or
- (c) is bankrupt or has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors or has compounded with creditors or made an assignment of income for their benefit (and if so, has given particulars to the tribunal).

(3) A person (except the community advocate or the public trustee) shall not be appointed as a guardian or manager unless the tribunal is

*Guardianship and Management of Property Act 1991*

satisfied that the person will observe the principles set out in section 3 and is suitable for appointment.

(4) For the purposes of subsection (3), the matters that the tribunal shall take into account include—

- (a) the views and wishes of the person for whom a guardian or manager is to be appointed; and
- (b) the desirability of preserving existing family relationships; and
- (c) whether the 2 persons are compatible; and
- (d) whether the proposed guardian or manager resides in the Territory; and
- (e) whether the proposed guardian or manager will be available and accessible to the other person; and
- (f) the nature of the functions and powers to be exercised under the order and whether the proposed guardian or manager is competent to exercise them; and
- (g) whether the interests and duties of the proposed guardian or manager are likely to conflict with the other person's interests to the detriment of the person's interests.

(5) The interests and duties of the spouse or a relative of a person shall not be taken to be likely to conflict with the interests of the person merely because of the fact of being the spouse or relative.

**11 Powers to be least restrictive**

The powers conferred on a person's guardian or on a manager of a person's property are to be no more restrictive of the person's freedom of decision and action than is necessary to achieve the purpose of the order.

**12 Recognition of interstate etc guardians and managers**

(1) The tribunal shall, upon application, register the appointment of a person who is, under a corresponding law—

- (a) a guardian for another person who resides outside the Territory; or
- (b) a manager of property of another person who resides outside the Territory.

(2) Upon registration, the person shall be taken to be a guardian, or manager of the property, of the other person, as the case requires, as if the appointment had been made by the tribunal.

(3) The tribunal shall not register an appointment unless the instrument of appointment, or a copy of it, has been lodged with the tribunal.

(4) In subsection (1)—

*corresponding law* means a law of a State or of another Territory, or a law of a prescribed country, that substantially corresponds to this Act.

### **13 Authority of guardian or manager**

An act or omission of a guardian or manager under this Act has effect as if it were an act or omission of the represented person and that person had the legal capacity for that act or omission.

### **14 Obligations**

(1) In exercising his or her powers as guardian for a person, or as manager of a person's property, the guardian or manager is to act, so far as is proper, as the person would have acted in the circumstances if he or she were not affected by the condition concerned.

(2) In exercising those powers, the matters that the guardian or manager shall take into account include—

- (a) the need to ensure, so far as possible, that the person does not become destitute; and
- (b) the desirability of maintaining, so far as is proper, the style of life of the person as it would have been if the person were not affected by the condition concerned.

(3) If, in a particular case, it is not possible to determine how the person would have acted, the guardian or manager shall act in the best interests of the person.

(4) Unless the tribunal, on application, by order, permits—

- (a) a manager of a person's property shall not enter into a transaction in relation to the property if the interests of the manager are in conflict, or may conflict, with the interests of the person; and
- (b) a manager of a person's property shall keep the manager's property separate from the person's property, but this does not apply to property jointly owned by the manager and the person.



**15 Fees and expenses**

- (1) A person who acts as a guardian or manager—
- (a) is entitled to be paid fees fixed by or in accordance with a determination under section 75; and
  - (b) is entitled to reimbursement of the reasonable expenses incurred in acting as guardian or manager.
- (2) Amounts payable under this section are payable out of, and are a charge on, the relevant person's property or, if the manager concerned is manager of part only of the relevant person's property, that part.

***Division 2—Supervision***

**16 Directions by tribunal**

- (1) The tribunal may, on application, give a direction to a guardian or manager about the exercise of his or her functions or powers.
- (2) A guardian or manager who, without reasonable excuse, contravenes a direction is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

**17 Restrictions on tribunal's power to give directions**

Where an order of a court affects a person for whom there is a guardian under this Act, or in respect of whom a manager is appointed under this Act, the tribunal shall not give a direction that is inconsistent with that order.

**18 Advice by tribunal**

- (1) The tribunal may, on application by a guardian or manager, give an opinion or advice about the exercise of functions or powers by the guardian or manager.
- (2) A guardian or manager who acts in accordance with such an opinion or advice shall be taken to have acted properly and in accordance with this Act unless, in obtaining the opinion or advice, he or she acted fraudulently or wilfully misrepresented or concealed a material fact.

**19 Regular review etc**

- (1) The tribunal may, at any time and whether on application or on its own motion, hold an inquiry into whether—
- (a) an order appointing a guardian or manager should be—
    - (i) varied; or
    - (ii) revoked on the ground that the need for guardianship or management no longer exists; or
  - (b) a guardian or manager should be removed under section 31.
- (2) The tribunal shall hold such an inquiry in respect of each order appointing a guardian or manager at least once every 3 years.
- (3) If—
- (a) a guardian or manager dies; and
  - (b) under the order of appointment, some other person thereupon becomes a replacement guardian or manager;

the tribunal shall hold an inquiry into the suitability of the replacement guardian or manager as soon as practicable.

- (4) A reference in this section to an *order* shall, in relation to an order registered under section 12, be read as a reference to the registration of that order.

***Division 3—Matters relating to management***

**20 Access to records**

Unless the tribunal otherwise orders, a manager of a person's property is entitled to inspect a will or other testamentary instrument made by the person and to any other document relating to the property.

**21 Payments for maintenance etc**

- (1) The manager of a person's property may, out of the property, pay reasonable amounts for the maintenance, advancement or education, or otherwise for the benefit, of the person and of the person's dependants (if any).
- (2) The payments may be made to or on behalf of the person and, if the person has a guardian, to the guardian.
- (3) The payments may be made out of income or capital.

*Guardianship and Management of Property Act 1991*

(4) In determining whether to make a payment, the matters that the manager shall take into account include—

- (a) the person's views and wishes; and
- (b) the amount and nature of the property; and
- (c) the amount and nature of any other of the person's property; and
- (d) the present and likely future needs of the person and any dependants.

**22 Receipt of money**

(1) Unless the tribunal otherwise orders, if a manager of a person's property receives money—

- (a) as interest or income in respect of the property; or
- (b) as the proceeds of the realisation of the property;

the manager becomes manager of the money.

(2) Unless the tribunal otherwise orders, if there is an accretion to property in respect of which a manager has been appointed, the manager becomes manager of the extra property.

**23 Execution of instruments**

An instrument executed by a manager of a person's property acting as manager has the same effect as if it had been executed by the person.

**24 Investments**

(1) A manager shall not invest money held in his or her capacity as manager except—

- (a) in investments in which trust money may, in accordance with the *Trustee Act 1925*, be invested; or
- (b) as the tribunal, by order, permits.

(1A) Subsection (1) has effect notwithstanding the *Public Trustee Act 1985*.

**25 Real estate**

If the property for which a manager is appointed includes land held under the *Land Titles Act 1925*, the manager shall—

*Guardianship and Management of Property Act 1991*

- (a) within 14 days after being appointed, lodge a copy of the order of appointment; or
- (b) within 14 days after being registered as manager under section 12, lodge a copy of the relevant order of appointment together with evidence of the registration;

with the registrar-general.

**26 Accounts**

(1) A manager other than the public trustee shall, in accordance with the regulations, file with the public trustee such accounts and other documents relating to the management of the relevant property as are prescribed.

(2) A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

(3) The tribunal may, upon application, by order—

- (a) give a manager directions in relation to the filing of the prescribed accounts and documents; and
- (b) direct a manager to have the accounts and documents audited by a specified auditor.

(4) A manager who, without reasonable excuse, contravenes a direction is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

**27 Examination of accounts**

(1) The public trustee shall examine the accounts and documents referred to in subsection 26 (1) and may apply to the tribunal for the disallowance of any item in the accounts.

(2) The tribunal shall not make an order disallowing an item if the tribunal is satisfied that the manager acted in good faith and with reasonable care in the exercise of powers conferred on the manager.

(3) Where an item is disallowed by the tribunal, the manager concerned—

- (a) is not entitled to payment under section 15 of the amount of the item disallowed; and

*Guardianship and Management of Property Act 1991*

- (b) shall pay to the Territory the amount of the costs reasonably incurred by the public trustee in making the application to the tribunal.
- (4) Where the public trustee examines the accounts and other documents in respect of the management of property by a manager, the manager shall pay to the Territory a fee fixed by or in accordance with a determination under section 75 in respect of the examination.
- (5) An amount payable to the Territory under paragraph (3) (b) or subsection (4) is due for payment on the 28th day after notice in writing specifying the amount of the debt is given to the debtor by the public trustee.
- (6) The tribunal may, upon an application by the manager and with the consent of the public trustee, waive the payment of the whole or part of an amount payable to the Territory under paragraph (3) (b) or subsection (4).

*Division 4—Cessation of guardianship or management*

**28 Resignation**

A guardian or manager may resign by writing given to the president.

**29 Death of represented person**

Subject to section 30, a person's guardian, or a manager of a person's property, ceases to be guardian or manager when the person dies.

**30 Manager may act until notified of discharge etc**

An order appointing a guardian or manager continues in force, so far as an act or thing done under it in good faith is concerned, until the guardian or manager receives notice of the death of the represented person, notice of the revocation of the order or notice of his or her removal from office under section 31.

**31 Removal by tribunal**

The tribunal may, by order, remove a person appointed as a guardian or manager if it is satisfied that—

- (a) the person is no longer suitable to be a guardian or manager; or  
(b) the person is no longer competent to exercise the functions or powers of a guardian or manager; or

- (c) the person has failed to exercise the functions or powers of a guardian or manager; or
- (d) the person has contravened a provision of this Act.

**32 Surviving or substitute guardians etc**

(1) Where a person ceases to be a joint guardian (whether by death or otherwise)—

- (a) the surviving guardian becomes the sole guardian; or
- (b) if there are 2 or more surviving guardians—the survivors become joint guardians.

(2) Where a person ceases to be a joint manager of property (whether by death or otherwise)—

- (a) the surviving manager becomes the sole manager of the property; or
- (b) if there are 2 or more surviving managers—the survivors become joint managers of the property.

(3) Where the community advocate becomes aware that there is no longer a guardian for a person, but not because of—

- (a) the revocation by the tribunal of the order appointing the person as guardian; or
- (b) the removal by the tribunal of the person as guardian;

the community advocate shall give the tribunal written notice of that fact.

(4) If the notice indicates that the community advocate or a person specified by the community advocate will act as guardian, the notice shall be taken to be an application for the appointment of the advocate or that person, as the case may be, as the guardian.

(5) Where the community advocate becomes aware that there is no longer a manager of a person's property, but not because of—

- (a) the revocation by the tribunal of the order appointing the person as manager; or
- (b) the removal by the tribunal of the person as manager;

the community advocate shall give the tribunal written notice of that fact.

(6) If the notice indicates that the community advocate or a person specified by the community advocate has consented to act as manager, the

*Guardianship and Management of Property Act 1991*

notice shall be taken to be an application for the appointment of the advocate or that person, as the case may be, as the manager.

## **PART 3—INQUIRIES BY TRIBUNAL**

### *Division 1—Procedure*

#### **33 Need for inquiry**

The tribunal shall not make an order unless it has held an inquiry into the relevant matter.

#### **34 Sitings**

(1) Subject to subsection (2), the tribunal is to sit in such places, including places outside the Territory, as the president decides.

(2) The tribunal shall not sit in premises customarily used by a court, unless the president is satisfied that no other suitable premises are available or appropriate in the circumstances.

#### **35 Notice of inquiry**

(1) At least 7 days before the tribunal holds an inquiry into a matter concerning a person, the presidential member shall, so far as practicable, give written notice of the inquiry to—

- (a) the person; and
- (b) the person's spouse, parents, brothers and sisters; and
- (c) each child of the person; and
- (d) if the person has a guardian—the guardian; and
- (e) if there is a manager of the person's property—the manager; and
- (f) the community advocate; and
- (g) if the matter relates to property—the public trustee.

(2) Subsection (1) shall not be taken to limit the person to whom notice of the inquiry may be given.

#### **36 Appearance and representation**

(1) Each person referred to in section 35 who has been given notice of an inquiry under that section is entitled to appear and give evidence at the inquiry.



- (2) Other persons may appear and give evidence at an inquiry only by leave of the tribunal.
- (3) A person appearing at an inquiry may be represented by an agent or a legal practitioner.
- (4) The tribunal may appoint a person to represent a person who is not otherwise represented.

### **36A Appearance by audiovisual or audio links**

- (1) This section applies where, in relation to an inquiry or a part of an inquiry (the *relevant inquiry*), the tribunal has given a direction under subsection 18 (1) or 30 (1) of the *Evidence (Miscellaneous Provisions) Act 1991*.
- (2) Where this section applies a person who, in a relevant inquiry—
  - (a) is entitled to appear; or
  - (b) is entitled to appear for another person;

may appear in that inquiry and participate and, if so required, give evidence in accordance with the direction.

- (3) A person who appears in a relevant inquiry in accordance with this section shall be taken to be before the tribunal.

### **37 Conduct of inquiry**

- (1) An inquiry shall be held in public unless the tribunal orders otherwise.
- (2) An inquiry shall be conducted informally and with as little regard to legal technicalities as is just.
- (3) The tribunal is bound by the rules of natural justice.

### **38 Evidence**

- (1) The tribunal is not bound by the rules of evidence but may inform itself on any matter relevant to an inquiry in such manner as it thinks fit.
- (2) Evidence in an inquiry may be given orally or in writing.
- (3) For the purposes of an inquiry, the tribunal may take evidence on oath or on affirmation and for that purpose the presidential member may—

- (a) require a person appearing before the tribunal to take an oath or make an affirmation; and
  - (b) may administer an oath or affirmation to such a person.
- (4) For the purposes of an inquiry, the presidential member may require a person appearing before the tribunal—
- (a) to answer a question relevant to the inquiry; or
  - (b) to produce a document relevant to the inquiry.

### **39 Authority for medical or other examinations**

- (1) The presidential member may, for the purposes of an inquiry, authorise a medical or other examination of the person who is the subject of the inquiry.
- (2) An authority has effect as a valid consent for anything done in the course of the examination.

### **40 Assistance for tribunal**

The tribunal may appoint a legal practitioner or doctor or any other person with appropriate expertise to assist it in relation to an inquiry.

### **41 Power to obtain information and documents**

- (1) Where the presidential member is satisfied that a person is capable of providing information or producing a document relevant to an inquiry, the presidential member may, by written notice given to the person, require the person—
- (a) to give the information to the presidential member in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
  - (b) to produce the document to the presidential member.
- (2) The notice shall state—
- (a) the place at which the information or document is to be given or produced to the presidential member; and
  - (b) the time at which, or the period within which, the information or document is to be so given or produced.
- (3) Where the presidential member is satisfied that a person has information relevant to an inquiry, the presidential member may, by written

notice given to the person, require the person to attend before the tribunal at a time and place specified in the notice to answer questions relevant to the inquiry.

#### **42 Retention of documents**

Where a document is produced to the presidential member in accordance with a requirement under subsection 38 (4) or 41 (1), the presidential member —

- (a) may take possession of, and may make a copy of, or take extracts from, the document; and
- (b) may retain possession of the document for such period as is necessary for the purposes of the inquiry; and
- (c) during that period shall permit a person who would be entitled to inspect the document, if it was not in the possession of the presidential member, to inspect the document at any reasonable time.

#### **43 Form of orders**

- (1) Orders of the tribunal shall be in writing signed by the member or members constituting the tribunal in the matter to which the order relates.
- (2) An order appointing a guardian or manager—
  - (a) shall specify the powers conferred on the guardian or manager; and
  - (b) is subject to such conditions, or limitations as to time, as are specified therein.
- (3) If an order relates to property, it shall specify the property.

#### **44 Proof of orders**

A copy of an order signed in accordance with subsection 43 (1) is admissible as evidence in proceedings that such an order was made.

#### **45 Obtaining reasons for decisions**

- (1) In this section—

*decision* includes a direction and an order.
- (2) Where—
  - (a) the tribunal makes a decision; and

- (b) a person who is entitled to appeal to the Supreme Court against the decision requests the presidential member, in accordance with subsection (3), for a statement of reasons in respect of the decision;

the presidential member shall give a statement in writing of those reasons to the person as soon as practicable but, in any case, within 28 days after the day on which the request was received by the presidential member.

(3) A request for a statement of reasons shall be in writing given to the presidential member within 28 days after the day on which the decision was made.

- (4) A statement of reasons shall—
  - (a) set out the tribunal’s findings on material questions of fact; and
  - (b) refer to the evidence or other material on which the finding was made; and
  - (c) give the tribunal’s reasons for the decision.

#### **46 Withdrawal of applications**

The tribunal may allow an application for an order to be withdrawn at any time before it is determined.

#### **47 Costs**

- (1) Where the tribunal is satisfied that—
  - (a) an application is frivolous, vexatious or has not been made in good faith; and
  - (b) a person other than the applicant has reasonably incurred expenses in relation to the inquiry concerning the application;

the tribunal may order the applicant to pay a specified amount to the person by way of compensation.

- (2) The amount to which the order relates is a debt due to the person by the applicant.

***Division 2—Miscellaneous***

**48 Removal of persons disrupting inquiries**

(1) Where the presidential member is satisfied that a person is substantially disrupting the conduct of an inquiry, the presidential member may order the person to leave the place where the inquiry is being held.

(2) A person who, without reasonable excuse, contravenes an order is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

(3) If the person does not obey the order, the presidential member may authorise a police officer to remove the person and the police officer may, using such force and assistance as is necessary and reasonable, remove the person.

**49 Prohibited publications**

(1) A person shall not, without the written authority of the presidential member —

- (a) publish to the public, or to a section of the public, a report of an inquiry before the tribunal; or
- (b) broadcast or play to the public, or to a section of the public, a sound recording of an inquiry;

that would enable a person to be identified as a person for whom a guardian had been or was to be appointed, or of whose property a manager had been or was to be appointed.

(2) A person shall not, without the written authority of the presidential member, publish to the public, or to a section of the public, a photograph taken at, or of any proceedings in, an inquiry.

(3) In subsection (2)—

*photograph* includes negative, film, videotape and any other record of visual images.

(4) A person who contravenes subsection (1) or (2) without reasonable excuse is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

**50 Failure to answer questions etc**

- (1) A person shall not, without reasonable excuse, fail to—
- (a) answer a question or produce a document when required to do so under subsection 38 (4); or
  - (b) give information or produce a document when required to do so under subsection 41 (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) It is not a reasonable excuse for the purposes of subsection (1) for a person to fail to comply with a requirement under subsection 38 (4) or 41 (1) on the ground that the answer to the question, the production of the document or the giving of the information might tend to incriminate the person but—

- (a) any answer or information given or document produced; and
- (b) any information, document or thing obtained as a direct or indirect consequence of the giving of the answer or information, or the production of the document;

is not admissible in evidence against the person in any civil or criminal proceedings, other than proceedings for—

- (c) an offence against section 53 or 54; or
- (d) any other offence in respect of the falsity of the answer, document or information; or
- (e) an offence under or by virtue of Part 8 of the Crimes Act that relates to an alleged offence referred to in paragraph (c) or (d).

**51 Failure to attend before tribunal**

A person who has been given notice under section 41 to appear before the tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the notice; or
- (b) fail to attend and report daily unless excused, or released from further attendance, by the presidential member.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**52 Refusing to be sworn etc**

A person shall not, without reasonable excuse, fail to take an oath or make an affirmation when required to do so under section 38.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**53 False information etc**

(1) A person shall not, with intent to mislead the tribunal, file or lodge with the tribunal a document knowing it to be false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person who knowingly gives false evidence to the tribunal in an inquiry is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

**54 Influencing participants in inquiry**

A person shall not improperly influence a person in relation to the person's participation in an inquiry (whether as a member of the tribunal or as a person giving evidence to the tribunal) to act otherwise than in the course of the person's duty in relation to the inquiry.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**55 Obstructing tribunal**

A person shall not, without reasonable excuse—

- (a) obstruct the tribunal or a member of the tribunal in the exercise of a function or power under this Act; or
- (b) disrupt proceedings before the tribunal.

Maximum penalty: 50 penalty units, imprisonment for 6 months both.

***Division 3—Appeals***

**56 Appeals**

(1) An appeal to the Supreme Court from an order, direction or decision of the tribunal may be brought by a person—

- (a) who appeared, or was entitled under subsection 36 (1) to appear, before the tribunal in the relevant inquiry; or
- (b) who, with leave of the tribunal, would have been entitled to appear before the tribunal in the relevant inquiry; or
- (c) in respect of whom the order, direction or decision was made.

*Guardianship and Management of Property Act 1991*

- (2) An appeal may be brought—
- (a) on a question of law—as of right; or
  - (b) on any other question—only with the leave of the Supreme Court.
- (3) An appeal shall be instituted in accordance with the *Supreme Court Rules*—
- (a) within 28 days after the day on which the order, direction or decision was made; or
  - (b) if the appellant requested a statement of reasons under section 45 in respect of the order, direction or decision—within 28 days after the day on which the appellant receives the statement; or
  - (c) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.
- (4) The Supreme Court shall hear and determine the appeal and may make such order as is just, including an order confirming the order, direction or other decision, setting it aside and remitting the matter to the tribunal with directions or substituting its own order, direction or decision.



**PART 4—GUARDIANSHIP AND MANAGEMENT OF  
PROPERTY TRIBUNAL**

*Division 1—Establishment, functions and powers*

**57 Establishment**

There is hereby established a tribunal by the name of the Guardianship and Management of Property Tribunal.

**58 Functions and powers**

- (1) The tribunal has the functions and powers given to it under this Act.
- (2) Without limiting subsection (1), the tribunal has power to do everything necessary or convenient to be done in relation to the carrying out of its functions.

*Division 2—Tribunal members*

**59 Membership of tribunal**

- (1) The tribunal consists of—
  - (a) the president; and
  - (b) the deputy presidents; and
  - (b) the non-presidential members.
- (2) The members of the tribunal are to be appointed by the Executive.

**60 Presidential members**

- (1) A person is eligible to be appointed president only if the person is a magistrate.
- (2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

**61 Non-presidential members**

The Executive must appoint as non-presidential members people who, in its opinion, have appropriate expertise, training or experience in relation to, and are otherwise suitable to deal with, the needs of people who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect.

**62 Terms of appointment generally**

- (1) A member may be appointed as a full-time or part-time member.
- (2) A member holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a member who is a magistrate.

**63 Matters to be included in instrument of appointment etc**

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) whether the member is the president, a deputy president or a non-presidential member; and
- (b) the period for which the member is appointed; and
- (c) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

**64 Duration of appointment**

- (1) A member is to be appointed for a term of not longer than 5 years.
- (2) The Executive may end the appointment of a member who is not a magistrate—
  - (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- (3) The Executive must end the appointment of—
  - (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
  - (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
  - (c) a non-presidential member if the Executive is satisfied that the person is no longer a suitable person to deal with the needs of people who, because of a physical, mental, psychological or intellectual condition, need assistance or protection from abuse, exploitation or neglect; or

*Guardianship and Management of Property Act 1991*

- (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

***Division 3—Registrar and deputy registrars***

**65 Registrar and deputy registrars of tribunal**

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

***Division 4—Other provisions***

**66 Constitution of tribunal**

- (1) The tribunal may exercise its powers only if constituted by—
  - (a) a presidential member; or
  - (b) a presidential member and 2 non-presidential members.
- (2) However, if—
  - (a) the tribunal is constituted for an inquiry by a presidential member and 2 non-presidential members; and
  - (b) a non-presidential member ceases to be a member, or to be available for the inquiry, before the completion of the inquiry;

the presidential member and any remaining non-presidential member may finish the inquiry if the presidential member considers it desirable to do so.

**66A Role of president**

- (1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about—
  - (a) how the tribunal is to be constituted for a particular matter; and

- (b) the members who are to constitute the tribunal for a particular matter.

**66B Deciding questions**

- (1) The presidential member is to decide a question of law arising in a matter.
- (2) If there is a division of opinion about another question arising in a matter, the question is decided—
  - (a) according to the opinion of the majority of members constituting the tribunal; or
  - (b) if there is no majority on the question—according to the opinion of the presidential member.

**66C Protection of members etc**

- (1) This section applies to a person who is or has been—
  - (a) a member of the tribunal; or
  - (b) the registrar or a deputy registrar of the tribunal; or
  - (c) a person acting under the tribunal’s direction or authority; or
  - (d) a participant in a matter before the tribunal.
- (2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

**66D Secrecy**

- (1) In this section—
  - court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.
  - person to whom this section applies* means a person who is or has been—
    - (a) a member of the tribunal; or
    - (b) the registrar or a deputy registrar of the tribunal; or
    - (c) authorised to exercise a function or power under this Act in relation to the tribunal.

*produce* includes permit access to.

*Guardianship and Management of Property Act 1991*

***protected information*** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function or power under this Act in relation to the tribunal.

- (2) A person to whom this section applies must not—
- (a) make a record of protected information; or
  - (b) directly or indirectly, divulge or communicate to a person protected information about someone else;

unless the record is made, or the information divulged or communicated, in relation to the exercise of a function or power, as a person to whom this section applies, under this Act or another Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of the other person.

- (4) A person to whom this section applies is not required—
- (a) to divulge or communicate protected information to a court; or
  - (b) to produce a document containing protected information to a court;

unless it is necessary to do so for this Act or another Act.

## **PART 5—MISCELLANEOUS**

### **67 Emergency appointments**

- (1) The tribunal may—
- (a) under section 7, appoint the community advocate to be the guardian for a person; or
  - (b) under section 8, appoint the community advocate or the public trustee to be a manager of a person's property;

without holding an inquiry under Part 3 if the tribunal is satisfied that there are special circumstances of urgency that make it proper to do so.

- (2) The order of appointment has effect for such period, not exceeding 10 days, as is specified in the order.

### **68 Emergency removal of disabled persons**

- (1) If—
- (a) the presidential member or a judicial officer is satisfied that—
    - (i) a guardian has been appointed for a person; or
    - (ii) grounds exist for the appointment of a guardian for a person; and
  - (b) the person is—
    - (i) because of a physical, mental, psychological or intellectual condition, likely to suffer serious damage to his or her physical, mental or emotional health if not removed from a particular place; or
    - (ii) being unlawfully detained in a particular place;

the presidential member or judicial officer may, on application by the community advocate, issue a warrant authorising the community advocate, with such police officers as may be required, and using such force as is necessary and reasonable, to enter that place and remove that person.

- (2) A warrant shall specify—
- (a) the purpose for which it is issued; and
  - (b) the person whose removal it authorises; and
  - (c) the place from which that removal is authorised; and

*Guardianship and Management of Property Act 1991*

- (d) particular hours during which the removal is authorised or that removal is authorised at any time of the day or night; and
  - (e) the date on which it ceases to have effect, being a date no later than 14 days after the issue of the warrant.
- (3) Subject to subsection (5), the application shall be in writing accompanied by a statement setting out the information in support of the application.
- (4) All information, whether oral or in writing, given in support of the application shall be given on oath or affirmation.
- (5) If it is impracticable to apply in accordance with subsection (3), an application may be made by telephone or other appropriate means.
- (6) Where subsection (5) applies—
- (a) the presidential member or the judicial officer shall prepare and sign the warrant and tell the community advocate its terms; and
  - (b) the community advocate shall prepare an instrument in the same terms as the warrant and write on it—
    - (i) the time at which and the date on which the warrant was signed; and
    - (ii) the name of the person who signed the warrant; and
  - (c) the community advocate shall give the person who signed the warrant, not later than 24 hours after it was signed, the statement mentioned in subsection (3) and the instrument mentioned in paragraph (b); and
  - (d) while the warrant remains in force, the instrument may be used instead of the warrant; and
  - (e) a court shall not find that the premises were entered in accordance with the warrant unless the warrant signed by the presidential member or judicial officer is admitted in evidence.
- (7) As soon as practicable after the person is removed, the tribunal shall hold an inquiry and if there is no guardian available the community advocate shall apply to be appointed as the person's guardian.

**69 Capacity to consent to medical etc procedures**

- (1) If—

*Guardianship and Management of Property Act 1991*

- (a) the guardian for a person has the power to give for the person a consent required for a medical procedure or other treatment; or
- (b) a declaration that a person is not competent to give a consent required for a prescribed medical procedure is in force under subsection (2);

the person is not competent to give such a consent for the procedure or treatment.

(2) If a guardian is appointed for a person, the tribunal may, by order, declare that the person is not competent to give a consent required for a prescribed medical procedure.

(3) Where a person, who is not competent to do so, purports to consent to the performance of a medical procedure or the provision of other treatment for the person by a doctor, no action or proceeding, civil or criminal, lies against the doctor by reason only of the performance of that procedure or the provision of that treatment without the person's consent if—

- (a) the doctor did not know, or could not reasonably be expected to know, that the person was not competent to give the consent required; and
- (b) the doctor otherwise acted in good faith in performing that procedure or providing that treatment.

**70 Tribunal may consent to prescribed medical procedures**

(1) If the tribunal has made an order under subsection 69 (2) in respect of a person, it may, on application, by order, consent to a prescribed medical procedure (other than treatment for psychiatric illness, convulsive therapy or psychiatric surgery) for the person if it is satisfied that—

- (a) the procedure is otherwise lawful; and
- (b) the person is not competent to give consent and is not likely to become competent in the foreseeable future; and
- (c) the procedure would be in the person's best interests; and
- (d) the person, the guardian and any other person whom the tribunal considers should have notice of the proposed procedure are aware of the application for consent.



- (2) The tribunal shall appoint the person's guardian, or the community advocate or some other independent person to represent the person in connection with the inquiry relating to the consent.
- (3) In determining whether a particular procedure would be in the person's best interests, the matters that the tribunal shall take into account include—
- (a) the wishes of the person, so far as they can be ascertained; and
  - (b) what would happen if it were not carried out; and
  - (c) what alternative treatments are available; and
  - (d) whether it can be postponed because better treatments may become available; and
  - (e) in the case of a transplantation of tissue—the relationship between the 2 people.
- (4) The tribunal shall not consent to the removal of non-regenerative tissue for transplantation to the body of another living person unless, in addition to the matters specified in paragraphs (1) (a) to (d), it is satisfied that—
- (a) the risk to the person from whom the tissue is to be taken is small; and
  - (b) the risk of failure of the transplant is low; and
  - (c) the life of the person to whose body the tissue is to be transplanted would be in danger if the transplant were not made; and
  - (d) it is highly likely that transplanting such tissue from someone else would be unsuccessful.
- (5) In an order by which the tribunal consents to the removal of non-regenerative tissue for transplantation to the body of another living person, the tribunal shall specify the time and date on which the order is made.

## **71 Power to adjust transactions**

- (1) Where a person for whose property a manager is appointed purports to enter into a transaction concerning the property, the transaction is, subject to subsection (2), not void on the ground that the person was not legally competent to enter into the transaction.
- (2) The tribunal, the Supreme Court or the Magistrates Court may, on an application made within 90 days after the date of the transaction by the

*Guardianship and Management of Property Act 1991*

guardian, the manager or some other person concerned in the transaction, by order—

- (a) confirm the transaction; or
- (b) declare the transaction void; or
- (c) adjust the rights of the parties to the transaction;

as is just.

(3) The tribunal, the Supreme Court or the Magistrates Court may order an application made to it to be transferred to another of the tribunal, the Supreme Court or the Magistrates Court.

(4) A transferred application shall be dealt with as if it had been commenced in the tribunal or the relevant court and the tribunal or court may make any proper order for the further steps to be taken before it.

(5) An order under this section has effect according to its tenor.

## **72 Injunctions to restrain dealings**

(1) The tribunal may, on application, by order, restrain a person from entering into, completing or registering or otherwise giving effect to a transaction with another person concerning the property of the other person if the tribunal is satisfied that there are grounds for the appointment of a manager for the property.

(2) An order remains in force for such period not exceeding 3 days as is specified in the order but if, within that period, an application for the appointment of a manager is made to the tribunal, the tribunal may, by order, continue the first order until the application is determined.

(3) A person who has notice of an order under this section and, without reasonable excuse, acts contrarily to it is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units, by imprisonment for a period not exceeding 6 months or both.

## **73 Conduct of directors, servants and agents**

(1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and

*Guardianship and Management of Property Act 1991*

- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.
- (2) A reference in subsection (1) to the state of mind of a body or person is to be read as including a reference to—
- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
  - (b) the body's or person's reasons for the intention, opinion, belief or purpose.
- (3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.
- (4) Where—
- (a) a natural person is convicted of an offence against this Act or an offence referred to in paragraph 50 (2) (d) or (e); and
  - (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

- (5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.
- (6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**75 Determination of fees**

- (1) The Minister may, by notice published in the Gazette, determine—
- (a) the amounts of fees that are payable under section 15 to guardians or managers; or
  - (b) the amounts of fees payable under subsection 27 (4) by managers for the examination of accounts and documents by the public trustee; or

- (c) the rate at which, or the method by which, fees referred to in paragraph (a) or (b) are to be calculated.

(2) A determination is a disallowable instrument for the *Subordinate Laws Act 1989*.

**77 Regulation-making power**

(1) The Executive may make regulations for this Act.

(2) Without limiting subsection (1), the regulations may make provision with respect to—

- (a) the making of applications to the tribunal; and
- (b) the imposition and remission of fees in relation to the making of applications and the provision of copies of the records of proceedings before the tribunal; and
- (c) the creation of offences punishable by maximum penalties of not more than 10 penalty units.

**78 Transitional provisions about tribunal members**

(1) If a person held appointment as president immediately before the commencement of this section, the person continues, subject to this Act, as president for the remainder of the term for which the person was appointed as president.

(2) If a person held appointment as acting president immediately before the commencement of this section, the person is taken, on the commencement, to have been appointed as a deputy president for a period of 5 years to begin on the commencement.

(3) If a person held appointment as a non-presidential member immediately before the commencement of this section, the person continues, subject to this Act, as a non-presidential member for the remainder of the term for which the person was appointed as a non-presidential member.

(4) This section expires 3 months after it commences.

## *Guardianship and Management of Property Act 1991*

### ENDNOTES

#### 1 About this republication

This is a republication of the *Guardianship and Management of Property Act 1991* as in force on 1 June 2000. It includes all amendments made to the Act up to Act 2000 No 17.

Amending laws are annotated in the table of legislation and table of amendments.

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws: authorised printed republications to which the *Legislation (Republication) Act 1996* applies and unauthorised electronic republications. The status of this republication appears on the cover.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

In preparing this republication, amendments have not been made under section 13.

Not all amendments made under section 13 are annotated in the table of amendments. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

#### 2 Abbreviation key

##### Key to abbreviations in tables

|   |  |
|---|--|
| am = amended                              | pres = present                               |
| amdt = amendment                          | prev = previous                              |
| ch = chapter                              | (prev...) = previously                       |
| cl = clause                               | prov = provision                             |
| def = definition                          | pt = part                                    |
| div = division                            | r = rule/subrule                             |
| dict = dictionary                         | reg = regulation/subregulation               |
| exp = expires/expired                     | renum = renumbered                           |
| Gaz = Gazette                             | reloc = relocated                            |
| hdg = heading                             | R[X] = Republication No                      |
| ins = inserted/added                      | s = section/subsection                       |
| LR = Legislation (Republication) Act 1996 | sch = schedule                               |
| mod = modified                            | sdiv = subdivision                           |
| No = number                               | sub = substituted                            |
| notfd = notified                          | SL = Subordinate Law                         |
| o = order                                 | sp = spent                                   |
| om = omitted/repealed                     | * = SL unless otherwise stated               |
| orig = original                           | † = Act or Ordinance unless otherwise stated |
| p = page                                  |  |
| par = paragraph                           |  |

*Guardianship and Management of Property Act 1991*

**3 Table of legislation**

| Act†   | Year and number† | Gazette notification | Commencement   | Transitional provisions  |
|--|------------------|----------------------|--|--------------------------|
| <i>Guardianship and Management of Property Act 1991</i>                              | 1991 No 62       | 31 Oct 1991          | ss 1 and 2: 31 Oct 1991<br>remainder: 7 Jan 1992 (see Gaz 1991 No S147 p 2)            |                          |
| <i>Registrar-General (Consequential Provisions) Act 1993</i>                         | 1993 No 64       | 6 Sept 1993          | ss 1 and 2: 6 Sept 1993<br>remainder: 1 Oct 1993 (see s 2 (2) and Gaz 1993 No S207)    | pt III<br>(ss 6-13)      |
| <i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i> | 1994 No 34       | 30 June 1994         | ss 1 and 2: 30 June 1994<br>remainder: 1 July 1994 (see Gaz 1994 No S142 p 2)          | ss 3, 5-12,<br>15 and 19 |
| <i>Mental Health (Consequential Provisions) Act 1994</i>                             | 1994 No 45       | 7 Sept 1994          | ss 1 and 2: 7 Sept 1994<br>remainder: 6 Feb 1995 (see s 2 (2) and Gaz 1995 No S33 p 2) | —                        |
| <i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>      | 1995 No 25       | 5 Sept 1995          | 5 Sept 1995  | —                        |
| <i>Guardianship and Management of Property (Amendment) Act 1995</i>                  | 1995 No 36       | 31 Oct 1995          | 31 Oct 1995  | —                        |
| <i>Land Titles (Consequential Amendments) Act 1995</i>                               | 1995 No 54       | 20 Dec 1995          | 20 June 1996 (see s 2)   | —                        |
| <i>Legal Practitioners (Consequential Amendments) Act 1997</i>                       | 1997 No 96       | 1 Dec 1997           | ss 1 and 2: 1 Dec 1997<br>remainder: 1 June 1998 (see s 2 (2))                         | —                        |
| <i>Statute Law Revision (Penalties) Act 1998</i>                                     | 1998 No 54       | 27 Nov 1998          | ss 1 and 2: 27 Nov 1998<br>remainder: 9 Dec 1998 (see Gaz 1998 No 49 p 1078)           | —                        |
| <i>Courts and Tribunals (Audio Visual and Audio Linking) Act 1999</i>                | 1999 No 22       | 14 Apr 1999          | ss 1 and 2: 14 Apr 1999<br>remainder: 1 Sep 1999 (see Gaz 1999 No 35 p 447)            | —                        |
| <i>Crimes (Amendment) Act 1999</i>   | 1999 No 32       | 25 June 1999         | ss 1-4: 25 June 1999<br>remainder: 1 Oct 1999  | —                        |

*Guardianship and Management of Property Act 1991*

**3 Table of legislation**—continued

| Act†  | Year and number† | Gazette notification | Commencement | Transitional provisions |
|---|------------------|----------------------|--------------|-------------------------|
| <i>Law Reform (Miscellaneous Provisions) Act 1999</i>                     | 1999 No 66       | 10 Nov 1999          | 10 Nov 1999  | —                       |
| <i>Justice and Community Safety Legislation Amendment Act 2000 (No 2)</i> | 2000 No 2        | 9 Mar 2000           | 9 Mar 2000   | —                       |
| <i>Justice and Community Safety Legislation Amendment Act 2000 (No 3)</i> | 2000 No 17       | 1 June 2000          | 1 June 2000  | —                       |

**4 Table of amendments**

| Provision            | How affected†  |
|----------------------|--|
| s 3                  | am 2000 No 2 s 3 sch   |
| s 4                  | am 1994 No 45; 1997 No 96; 1999 No 66 s 6 sch 3; 2000 No 2 s 3 sch |
| s 7                  | am 1999 No 32 s 32   |
| s 10                 | am 2000 No 2 s 3 sch   |
| s 16                 | am 1998 No 54; 2000 No 2 s 3 sch                                   |
| s 18                 | am 2000 No 2 s 3 sch   |
| s 24                 | am 1995 No 36; 2000 No 2 s 3 sch                                   |
| s 25                 | am 1993 No 64; 1995 No 54  |
| s 26                 | am 1998 No 54  |
| s 31                 | am 2000 No 2 s 3 sch   |
| s 34                 | am 2000 No 2 s 3 sch   |
| s 35                 | am 1999 No 66 s 6 sch 3  |
| s 36                 | am 1997 No 96  |
| s 36A                | ins 1999 No 22 s 14<br>am 2000 No 17 s 3 sch 1                     |
| ss 38, 39            | am 1999 No 66 s 6 sch 3  |
| s 40                 | am 1997 No 96  |
| ss 41, 42            | am 1999 No 66 s 6 sch 3  |
| s 45                 | am 1999 No 66 s 6 sch 3  |
| ss 48, 49            | am 1998 No 54; 1999 No 66 s 6 sch 3                                |
| s 50                 | am 1998 No 54  |
| s 51                 | am 1998 No 54; 1999 No 66 s 6 sch 3                                |
| ss 52-54             | am 1998 No 54  |
| s 55                 | am 1998 No 54; 2000 No 2 s 3 sch                                   |
| hdg to div 1 of pt 4 | ins 2000 No 2 s 3 sch  |
| s 58                 | sub 1999 No 66 s 6 sch 3; 2000 No 2 s 3 sch                        |

*Guardianship and Management of Property Act 1991*

**4 Table of amendments**—continued

| Provision                          | How affected†                                    |
|------------------------------------|--|
| div 2 of pt 4 (ss 59-64).....      | ins 2000 No 2 s 3 sch                            |
| s 59.....                          | sub 1999 No 66 s 6 sch 3; 2000 No 2 s 3 sch      |
| s 60.....                          | am 1999 No 66 s 6 sch 3<br>sub 2000 No 2 s 3 sch |
| ss 61, 62.....                     | sub 2000 No 2 s 3 sch                            |
| s 63.....                          | am 1999 No 66 s 6 sch 3<br>sub 2000 No 2 s 3 sch |
| s 64.....                          | am 1994 No 38<br>sub 2000 No 2 s 3 sch           |
| div 3 of pt 4 (s 65).....          | ins 2000 No 2 s 3 sch                            |
| s 65.....                          | sub 2000 No 2 s 3 sch                            |
| div 4 of pt 4 (ss 66, 66A-<br>66D) | ins 2000 No 2 s 3 sch                            |
| s 66.....                          | am 1998 No 54<br>sub 2000 No 2 s 3 sch           |
| ss 66A-66D.....                    | ins 2000 No 2 s 3 sch                            |
| s 68.....                          | am 1999 No 66 s 6 sch 3                          |
| s 70.....                          | am 1994 No 45                                    |
| s 72.....                          | am 1998 No 54                                    |
| s 74.....                          | om 1998 No 54                                    |
| s 76.....                          | om 1995 No 25                                    |
| s 77.....                          | am 1998 No 54<br>sub 2000 No 2 s 3 sch           |
| s 78.....                          | ins 2000 No 2 s 3 sch                            |

**5 Table of earlier republications**

| Republication No | Amendments to  | Republication date |
|------------------|----------------|--------------------|
| (1)              | Act 1993 No 64 | 31 January 1994    |
| (2)              | Act 1994 No 45 | 28 February 1995   |
| (3)              | Act 1997 No 96 | 1 June 1998        |
| 4                | Act 2000 No 2  | 31 March 2000      |
| 4A               | Act 2000 No 2  | 31 March 2000      |

**6 Penalties in this republication**

The penalties in this republication have been revised in accordance with the *Interpretation Act 1967*, s 63. The value of a penalty unit for an offence against this Act at the date of publication is, therefore—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



*Guardianship and Management of Property Act 1991*

**4 Table of amendments**—continued

| Provision   | How affected† |
|---|---------------|
| See <i>Interpretation Act 1967</i> , s 33AA for additional information. |               |

© Australian Capital Territory 2017